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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of DIANE L. and LARRY
D. HAYDEN.

DIANE L. HAYDEN,

Respondent,

v.

LARRY D. HAYDEN,

Appellant.

G049892

(Super. Ct. No. 12D004113)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Salvador Sarmiento, Judge. Affirmed.

Law Offices of Jeffrey W. Doeringer for Appellant.

John L. Dodd & Associates, John L. Dodd and Benjamin Ekenes; Law Offices of Schmidt & Schmidt and Philip Schmidt for Respondent.

Larry Hayden (Larry)¹ appeals from an order reducing his spousal support obligation to Diane Hayden (Diane), arguing the trial court abused its discretion by failing to further lower or terminate support. On appeal, Larry argues the court's failure to issue a statement of decision was reversible error. In addition, he asserts the court failed to consider all the statutory factors delineated in Family Code section 4320² and failed to adequately consider Diane's need for support. We conclude his arguments lack merit, and we affirm the court's order.

I

After approximately seven years of marriage, Diane filed a petition for dissolution. She and Larry were both in their early 50s and had no children. Larry was employed, and Diane was not.

The matter was heard on August 23, 2013. The trial court issued a minute order, stating, "Pursuant to . . . section 4320, the court considered the following factors in determining spousal support" The court listed 14 factors. The minute order contained the following court conclusions: (1) the marriage was seven years and nine months and was a "short term marriage[:]" (2) Diane had been the victim of domestic violence; (3) Larry had the ability to pay support; and (4) Diane had the need for support.

With respect to spousal support, the court ordered Larry to pay Diane \$5,500 per month (beginning September 1, 2013) and 31 percent "of all bonuses and commissions he received." The court stated Diane should make reasonable efforts to become self-supporting. It determined jurisdiction of the issue of spousal support would terminate on December 31, 2016, and "[s]pousal support shall continue" until that date.

¹ We refer to the parties by their first names based upon custom in family law matters. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475, fn. 1.) We intend no disrespect.

² All further statutory references are to the Family Code, unless otherwise indicated.

The court ordered Larry to pay \$5,000 towards Diane's attorney fees. And finally, the court resolved issues concerning Larry's stock options, concluding Larry owed Diane \$20,553, which would be paid out of the next stock option. The court ordered Diane to prepare a final written dissolution judgment.

Before the final judgment was entered, Larry filed a request on October 31, 2013, seeking modification of spousal support. He requested modification or termination of support because Diane had found employment at Toshiba America, Inc., earning \$7,500 per month.

Diane filed a responsive declaration, stating, "[p]er the [c]ourt's findings, [Larry] and I have maintained an upper middle class life style. We had an Airstream Trailer which we took on vacations. We had late model cars. We lived in a home in a nice neighborhood in Laguna Niguel[.]" Diane stated she accepted the job offer on October 16 and started working October 21, 2013. Diane claimed that when she told Larry about her \$90,000 per year job, she recommended a reduction of spousal support. Larry suggested they negotiate a reduction without attorney involvement, but then he filed the underlying petition. In her declaration, Diane explained Larry would likely earn in excess of \$500,000, including \$200,000 in stock options. Diane concluded she was not yet self supporting, and without spousal support she would have insufficient funds to meet her monthly expenses. Diane asked the court to order Larry to make a substantial contribution to her legal fees in responding to his modification request.

The parties submitted income and expense declarations. The court held a hearing on December 10, 2013. The minute order and reporter's transcript show the court first addressed the issue of the lack of a final written dissolution judgment. After hearing argument from counsel, it entered and filed a lengthy final judgment proposed by Diane's attorney.

The judgment contained the parties' stipulation to the dissolution of their marriage and division of their property. Relevant to the issues currently on appeal are the

following factual findings and rulings: “On the issue of spousal support, pursuant to . . . [s]ection 4320, the [c]ourt makes the following findings and orders:

“A. The parties’ . . . marriage lasted for seven years, nine months.

“B. This is a short term marriage.

“C. The parties enjoyed an upper middle class lifestyle.

“D. The parties do not have minor children at home.

“E. [Diane] is . . . (52) years old. [Larry] is . . . (52) years old.

“F. [Diane] is presently not working.

“G. [Diane] did not work for most of the marriage. She was last employed in 2005 with Toshiba earning over [\$100,000] per year. This period of unemployment effects her employability. [She] graduated from high school. She does not have a college degree. She has no formal training in any area of employment.

“H. The [v]ocational [e]xpert concluded that [she] would not be rehired at her previous level of employment. With some training, she could be employed in an entry level office position earning about [\$17] per hour. . . . [Diane] has made reasonable efforts in trying to obtain employment.

“I. The [c]ourt denied the request that income be imputed to [Diane].

“J. The [c]ourt finds that there was [d]omestic [v]iolence in the marriage and [Diane] was the victim.

“K. [Diane] does not have the earning capacity to maintain the standard of living the parties enjoyed during the marriage.

“L. [Larry] has the ability to pay support, earning over [\$17,000] per month. [He] also receives bonuses and commissions from his employer which, if averaged over a [12-]month period, would increase his monthly income to well over [\$25,000] per month.”

The judgment provided Larry would pay Diane spousal support of \$5,500 per month starting September 1, 2013. The court also ordered Larry to pay Diane

31 percent of all gross bonuses and commissions received by him. It ordered Diane to make all reasonable efforts to find employment, concluding “since this is a short term marriage, [Diane] should be gainfully employed within one-half the length of the marriage.” Accordingly, the court determined spousal support would terminate on April 30, 2016.

After entering this judgment, the court turned its attention to Larry’s modification request. As stated in the court’s minute order, the court received the parties’ income and expense declarations and took judicial notice of the dissolution judgment. The court considered the parties’ opening statements and heard testimony from Larry and Diane. The minute order recorded the hearing started at 9:10 a.m., and the court took the modification request under submission at 10:39 a.m. the same day (approximately one and one-half hours long). The court issued its ruling at 3:15 p.m. Neither the reporter’s transcript or minute order reflects any request for a statement of decision.

In its minute order, the court ruled Diane’s full time employment was a significant change in circumstances. It modified spousal support by striking Diane’s entitlement to 31 percent of the commissions and bonus. It ordered Larry to continue paying \$5,500 per month. In addition, it ordered Larry to pay Diane \$2,000 towards her attorney fees.

Seven days later, on December 17, 2013, Larry requested a statement of decision under Code of Civil Procedure section 632. He informed the court he requested a statement of decision at the December 10 hearing and “hereby renews” the request. He asked for a statement that included the legal and factual basis for every section 4320 factor. In addition, he sought an explanation for why Diane’s needs were \$13,000 per month, which was \$2,996 more than her stated needs on her income and expense declaration. Larry requested other information not relevant to this appeal, which we will not repeat, such as why he must pay Diane’s attorney fees.

On February 24, 2014, the court filed a final order modifying spousal support. On March 3, 2014, the court issued a minute order stating it received Larry's request for a statement of decision under Code of Civil Procedure section 632. It ruled, "The [c]ourt has reviewed the minute order and the transcript from [the] hearing date [December 10, 2013,] with the [c]ourt [r]eporter and finds that no such request was made." Larry appealed.

II

A. Statement of Decision

Larry contends the order modifying spousal support should be vacated because the trial court failed to explain its reasoning in a statement of decision as required by section 3654. We disagree.

Larry fails on appeal to acknowledge he requested a statement of decision seven days after the hearing and expressly stated the request was based on Code of Civil Procedure section 632, not section 3654. Code of Civil Procedure section 632 provides that a request for a written statement of decision must be made before submission if the "trial" is less than one calendar day. Here, assuming the hearing was a "trial," it lasted less than one calendar day at the conclusion of which the trial court took the matter under submission. Because Larry did not request a statement of decision before submission, he was not entitled to one under Code of Civil Procedure section 632. We conclude the court did not err in denying Larry's request for a statement of decision under Code of Civil Procedure section 632.

Section 3654 provides: "At the request of either party, an order modifying, terminating, or setting aside a support order shall include a statement of decision." Larry never requested a statement of decision under section 3654 at the hearing; accordingly, he has waived the statutory right. We cannot say the court erred in failing to do something that was not requested.

On appeal, Larry suggests the court should have, sua sponte, treated his Code of Civil Procedure section 632 request for a statement of decision as a section 3654 request. He adds that because section 3654 does not specify a time frame in which to make a request, we should read the provision as requiring that requests be made in a “reasonable time.” He asserts seven days, the time it took him to make his request, was a reasonable time. Recognizing his request would not be considered timely under Code of Civil Procedure section 632, Larry contends the “reasonable time” requirement “would likely trump” the Code of Civil Procedure section’s specific time requirements. He argues section 3654 “is more specific and applies directly to support orders.” This argument is nonsensical.

First, section 3654 cannot be deemed more specific on the issue of timing because it is silent on that issue. Code of Civil Procedure section 632 is more specific because it expressly defines two deadlines for making a request for a statement of decision. Second, Larry overlooks section 210, providing the rules of practice and procedure applicable to civil actions also apply to Family Code proceedings. And finally, Larry provides no case authority, and we found none, supporting the premise of his argument the trial court had a sua sponte duty to treat an untimely Code of Civil Procedure section 632 request, as a timely section 3654 request.³ In light of the above, we conclude the court did not err in denying Larry’s untimely request for a statement of decision.

B. Modification

“The trial court exercises broad discretion in deciding whether to reduce or terminate a spousal support order. Its order must be based on (1) a material change in facts or circumstances existing at the time the order is made and (2) a consideration of the

³ The issue of when a section 3654 request must be made need not be decided because it does not change the outcome of this appeal; Larry never made a section 3654 request.

needs of both parties and their respective abilities to meet their needs. [Citations.] An appealing party must demonstrate the existence of a material change in facts or circumstances and that as a matter of law an abuse of discretion has occurred: ‘An abuse of discretion occurs when, after calm and careful reflection upon the entire matter, it can fairly be said that no judge would reasonably make the same order under the same circumstances. [Citation.]’” (*In re Marriage of Reynolds* (1998) 63 Cal.App.4th 1373, 1377.)

In determining whether there has been a material change, a court must consider the same factors set forth in section 4320 that a court considers when making an initial spousal support order. (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 899.) Those factors include each party’s earning capacity, the parties’ reasonable needs based on the marital standard of living, their obligations and assets, the duration of the marriage, their age and health, the tax consequences to the parties, the balance of hardships, the goal that the supported party should become self-supporting within a reasonable period of time, and other factors the court deems just and reasonable. (§ 4320.)

As Diane notes in her brief, Larry did not timely request a statement of decision. He also did not challenge the trial court’s minute order, which did not contain many factual determinations or any legal analysis to explain the court’s decision to reduce his support obligations. Absent a statement of decision, we presume the trial court made all factual findings necessary to support the order and determine whether substantial evidence supports these findings. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134 (*Arceneaux*).) We may infer all necessary findings in favor of the prevailing party. (*Id.* at p. 1133.) In reviewing these findings, we “‘accept as true all evidence tending to establish the correctness of the trial judge’s findings, resolving all conflicts in the evidence in favor of the prevailing party and indulging in all legitimate and reasonable inferences to uphold the judgment.’” (*In re Marriage of Stephenson*

(1995) 39 Cal.App.4th 71, 82, fn. 5.) To the extent the trial court's reasoning is unclear from the record, we apply the standard rule that "[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*Arceneaux, supra*, 51 Cal.3d at p. 1133.) We must presume the court performed its duties unless there is a clear showing to the contrary. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 494.)

The parties do not dispute the court's conclusion Diane's new full-time employment was "a significant change in circumstances." The sole issue on appeal is whether the court abused its discretion when modifying Larry's spousal support. Before we begin our analysis, it is helpful to review the components of the support award to appreciate how much it was reduced. The original support order awarded Diane \$5,500 monthly support plus 31 percent of all bonuses and commissions. The order did not specify what 31 percent would typically average per month for Diane's benefit. However, at the modification hearing, Larry testified he received four commission checks per year and an annual bonus. He stated his August and November 2013 commission checks were \$34,000 each. Thirty-one percent of this amount equates approximately to \$10,500 quarterly, which amounts to an extra \$3,500 per month.

Larry projected his next commission check (due February 2014) would be less (between \$14,000 and \$15,000). He explained the fourth quarter was "historically" lower than the others. Diane's share of this anticipated fourth quarter commission check would be a little over \$4,650, or approximately \$1,550 per month.

Thus, the support order including commissions could total as much as \$9,000 per month (or \$7,000 during the lower fourth quarter). But that does not end the analysis. Larry's October 2013 income and expense declaration also reflected a \$32,062 "annual bonus." Thirty-one percent of this bonus calculates to a little over \$9,900 for Diane extra per year (approximately \$800 per month).

In short, when the trial court modified spousal support by striking the obligation to pay 31 percent of bonuses and commissions, it effectively eliminated Diane's ability to collect an extra \$4,300 support per month (during Larry's more profitable quarters). Contrary to Larry's contention on appeal, this was not an insignificant reduction.

In a nutshell, Larry's argument on appeal is two-fold: (1) the court erroneously focused and relied on only one of the section 4320 factors, i.e., the parties' lifestyle during the marriage; and (2) the court should have focused on one section 4320 factor, i.e., Diane's actual needs without considering her prior lifestyle. Apparently Larry does not see the inherent inconsistency in these arguments. Essentially Larry would have us reverse for the court's purported failure to consider all relevant factors, but affirm if the court had focused on the one favorable factor of Larry's choosing. We conclude both arguments lack merit.

We begin with the first argument. Larry accuses the court of abusing its discretion by utilizing "flawed judicial analysis" because it refused to consider all 14 relevant factors articulated in section 4320. To prove the court "mechanically applied" the marital standard of living factor in modifying support, Larry simply points to portions of the record in which the court discussed the parties' marital standard of living. He makes several generalized statements about the nature of the hearing, accusing the court of "harping" about lifestyle. He also makes several speculative statements, such as, "It does not appear that the court took Diane's assets or her substantially increased income into . . . account" and "[t]he court did mention ability to pay . . . and made lip service to several other[] . . . [factors]." The record simply does not support these contentions.

After carefully reviewing the entire reporter's transcript of the hearing, we conclude there is no reason to speculate about what the court considered because the record reflects the court expressly stated it was considering the relevant section 4320

factors. For example, after considering testimony from both parties, during which the court asked the parties many direct questions to clarify certain facts about their financial circumstances, the court asked counsel to focus on the section 4320 factors in their closing statements. The court stated, “Let me tell you where I’m at, the reason we go through section 4320 factors is so the court gets an overall picture of the lifestyle, the expenses, the income, the parties had. The spousal support order is an attempt by the court to have the supported spouse somewhat have the same lifestyle that they had during the marriage. It is almost impossible in . . . most cases because there is only one faucet, and now you are dividing the money into two. [¶] If I look at the [section] 4320 factors and the lifestyle that the parties had during the marriage, even though she is now earning \$7,500 per month more, it doesn’t come close to the lifestyle she had while they were married. That is my question to you. [¶] My question to [Diane] is when I did the work, I look at ability to pay. He, clearly, has the ability; and then need. Has not the need changed because when I was looking at it, she had no income whatsoever except that which I said she could earn from her investments. Now she has \$7,500 so, clearly, there is a change on her part. So has there been a change in the need from my perspective in regard to her? [¶] You can answer first, the moving party.” These statements support the conclusion the court clearly understood its obligation to consider the section 4320 factors and recognized the change of circumstances in this case most effected the factor of the supported spouse’s “need.”

Later in the hearing, the court recalled the final dissolution judgment where it previously ruled the couple enjoyed a \$25,000 per month lifestyle during the marriage. It stated, “My support order is trying to get her as close to that lifestyle as possible.” Larry’s counsel told the court she did not recall such a finding at the prior support hearing and reminded the court it simply made the finding the couple had “an upper middle class standard of living.” The court clarified, “I made a finding that he, for a 12-month period, earned \$25,000 a month.” Larry’s counsel replied, “\$300,000 a year is what you found,

but he is, clearly, not even going to be making that this year.”⁴ The court responded that this year it appeared Larry would be “earning a lot more.” Diane’s counsel added there was evidence Larry made half a million dollars to date. The court redirected counsels’ attention back to the issue at hand, cautioning that support modification would not be based solely on Larry’s earnings. It stated, “The issue is not today. He could be making a million dollars. That is not the issue.” The court clarified the relevant issues were support “and the [section] 4320 factors.” This exchange between counsel and the court, when viewed in its entirety, further supports the conclusion the court properly focused on more than one section 4320 factor.

At the end of the hearing, the parties discussed how they believed support should be modified. They did not focus on only the marital lifestyle, but rather discussed other relevant section 4320 factors such as ability to pay, expenses, and Diane’s needs. For example, Diane’s counsel argued Diane received a net salary of \$6,000 and she needed an additional \$4,000 plus 15 percent of commissions to cover her expenses each month. Counsel suggested reducing support by \$1,500 and cutting the commission percentage in half but that termination of support was “ludicrous.” On the other hand, Larry’s counsel argued a \$4,000 support award would be punitive, and at minimum, support should be reduced to \$1,000 per month. Larry’s counsel argued \$8,500 gross income per month was “enough to sustain [Diane’s] lifestyle.” Nothing in this portion of the hearing suggested the parties or the court intended to disregard the section 4320 factors.

In summary, the court’s statements about the marital lifestyle, when viewed in context, were entirely appropriate. The court repeatedly stated it was considering section 4320 factors, and it asked the parties to discuss those factors in closing arguments. We found nothing in the record indicating the court ignored one factor in

⁴ We note counsel perhaps did not realize a person earning \$300,000 per year is earning \$25,000 per month.

favor of another. Moreover, as discussed earlier, without the benefit of a statement of decision we must presume the court made all findings necessary to support the order for which there is substantial evidence. Our review is limited to examining the record for any substantial evidence that will support the court's implied findings and determination. (*Arceneaux, supra*, 51 Cal.3d at pp. 1133-1134.) We conclude it does.

In this case there was ample evidence to support the court's modification of support. Larry admitted earning \$350,000 in 2010, and \$339,000 in 2011 (reflected in tax documents). His October 2013 paystub showed gross earnings of \$479,789.83. This evidence substantially supports the court's finding Larry had the ability to pay Diane \$5,500 per month.

In addition, the court appropriately relied upon the previously determined, and unchanged, section 4320 factors delineated in the final dissolution judgment. The record shows the trial court took judicial notice of the final judgment, from which Larry did not appeal. As described earlier in this opinion, the judgment contained many factual findings regarding relevant and applicable section 4320 factors that had not changed in the few months that had transpired between the dissolution hearing in August and the modification hearing in December 2013. The judgment discussed the age and health of the parties, Larry's domestic violence during the marriage, the duration of the marriage, Larry's income and ability to pay, and the upper middle class marital standard of living (averaging "well over" \$25,000 per month). All these factors were relevant, and we must assume they were considered and weighed by the trial court in determining how to modify support.

And finally, we conclude the record shows the trial court did more than pay "lip service" to the changed circumstance of Diane's needs in light of her new job. The court specifically asked both parties to address in their closing statements the statutory factor of "need" taking into account Diane's \$7,500 salary. We must assume the court considered Larry's counsel's argument support should be reduced to \$1,000 and Diane's

counsel's argument she was not earning enough money to cover her expenses and concluded there was disparity between the parties' financial circumstances. There is no reason to infer the court ignored Diane's income and expense declaration, or disregarded evidence she was employed.

To the contrary, the court's statements in the record support the conclusion it clearly understood Diane's new job was a material change of circumstances and her ability to earn \$90,000 a year at her new job (\$7,500 per month) related to the section 4320 factor of "need." We conclude there was substantial evidence supporting the court's conclusion further support was warranted based on this factor. It was undisputed Diane's salary did not make Diane entirely self-sufficient. Her earnings were insufficient to meet her monthly expenses of approximately \$10,000 without the addition of spousal support. And as stated in the dissolution judgment, Diane's period of unemployment during the marriage affected her employability and she had "no formal training in any areas of employment." Additional supporting evidence was the vocational expert's opinion Diane would not be rehired at her previous level of employment. Other relevant factors included Diane's age and that she suffered domestic violence during the marriage. And finally, we conclude the court appropriately considered the "upper middle class" marital standard of living in assessing the issue of Diane's needs.

Based on all the above, there was ample evidence to support the spousal support order. The court reasonably adjusted the support downward by approximately \$4,300 per month. In short, the court reduced the previous support payment by almost half to \$5,500. In addition, the judgment provides support that will terminate less than two years from now (April 30, 2016) because of the short duration of the marriage. Diane has a relatively short period of time to figure out how to become entirely self-sufficient. We find no error.

We turn to the second prong of Larry's argument on appeal that the trial court should have focused solely on the section 4320 factor of the supporting spouse's needs. He suggests the court's calculation of support should be based on a precise mathematical calculation of Diane's actual expenses, also taking into consideration that funds may be pulled from her savings account and other assets. Specifically, Larry calculates a support payment of \$5,500 per month, plus Diane's salary of \$7,500, would mean Diane would receive \$13,000 per month. He argues this figure is too high because her income and expense declaration stated she owed approximately \$10,000 per month in obligations and she had no outstanding credit card debt or arrearages. He misunderstands the applicable law. It is well settled determination of spousal support is an exercise of equitable discretion, requiring the court to weigh *all* section 4320 factors, not just one spouse's expense declaration.

We found no legal authority, and Larry cites to none, supporting his theory the needs of each party are limited to specific financial expenses. To the contrary, section 4320, subdivision (d), states courts must consider "[t]he needs of each party *based on the standard of living* established during the marriage." (Italics added.) Thus, although not dispositive standing alone, the parties' marital standard of living is certainly a point of reference to be considered in determining Diane's needs. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 307 (*Cheriton*).) As stated by one court, "The Legislature did not intend [the marital standard of living] to be a precise mathematical calculation, but rather a general reference point for the trial court in deciding this issue. [¶] . . . [T]he trial court may fix spousal support at an amount greater than, equal to or less than what the supported spouse may require to maintain the marital standard of living, in order to achieve a just and reasonable result under the facts and circumstances of the case." (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475.)

"Unquestionably, where the supporting party has the ability to pay, a trial court has

discretion to award spousal support at a level *above* the actual marital standard of living. [Citation.]” (*Cheriton, supra*, 92 Cal.App.4th at p. 208, italics added.)

Larry offers various mathematical calculations to prove \$13,000 is more than Diane needs. But as Larry should understand from his own arguments in pages nine through 20 of the opening brief, the court abuses its discretion if it focuses on a single section 4320 factor and ignores the rest. Balancing the applicable statutory factors, the trial court had discretion to determine the appropriate weight to accord to each factor when determining the support award. (*In re Marriage of Baker* (1992) 3 Cal.App.4th 491, 498.) As we have explained, the court weighed the statutory factors and fixed spousal support in an amount much less than what Diane would need to maintain the \$25,000 marital standard of living. We conclude the court’s order achieved “‘a just and reasonable result under the facts and circumstances of the case.’ [Citation.]” (*Cheriton, supra*, 92 Cal.App.4th at p. 308.)

On appeal, Larry submits several tangential arguments that we need only briefly address, finding each lacks merit. First, Larry cites to legal authority holding courts *can* deny spousal support. (*In re Marriage of Meegan* (1992) 11 Cal.App.4th 156 [no abuse of discretion to reduce husband’s support obligation to zero after court determined husband had not quit job to avoid support obligation].) True, but Larry fails to appreciate this legal authority does not hold a court *must* terminate support if one spouse finds a job. There is no bright line test. As stated above, courts are given broad discretion over spousal support and must weigh the statutory factors in making its determination.

Second, Larry contends the court did not consider Diane’s property assets or her inheritance in determining her need for support. It is unclear why he believes this evidence was not considered. It was certainly considered when the court first ordered spousal support in August 2013, and these figures were accurately reported in the income

and expense declaration filed before the modification hearing. Absent a statement of decision, we must assume the court considered these facts when exercising its discretion.

Related to this argument, Larry asserts section 4322 “is implicated” by his request to terminate support. That section provides, “In an original or modification proceeding, where there are no children, and a party has or acquires a separate estate, including income from employment, sufficient for the party’s proper support, no support shall be ordered or continued against the other party.” (§ 4322.) The statute is not necessarily implicated because Larry did not prove Diane’s income was sufficient for her “proper support.” (§ 4322.) He provides no legal authority holding “proper support” means anything less than spousal support awarded based on section 4320 factors.

Moreover, we found nothing in the record indicating the court refused to consider section 4322 when ruling on the modification request. Larry’s argument the court “did not appear” to consider section 4322 is unfounded. Larry did not discuss section 4322 at the hearing. Without having a statement of decision, Larry’s argument the court abused its discretion by ignoring section 4322 fails because we must presume the court preformed its duties.

Third, Larry maintains that because there is a significant change of circumstances a substantial reduction downward was warranted. To support this argument he cites, *Webb v. Webb* (1970) 12 Cal.App.3d 259, 263 (*Webb*), a case holding a wife’s new employment, a husband’s remarriage, and a change of custody of the parties’ minor child to husband, was a change in circumstances warranting termination of his support payments to wife. The appellate court held the trial court did not abuse its discretion after considering all relevant section 4320 factors. (*Ibid.*) The court reasoned wife was unemployed and caring for three minor children when the original \$1,050 spousal support award was made. At the time of the hearing, wife was earning \$18,000 per year and she no longer had custody of any of the children. The court noted wife had other assets because after the divorce she accumulated some savings and she owned two

pieces of real property. It concluded, “[These facts] establish[] to our satisfaction that she experienced no difficulty in living on the alimony of \$1,050 per month, which is considerably less than the amount she presently earns in the practice of her profession. [Husband], on the other hand, has remarried and now has custody of the parties’ only minor child. He received far less property than [wife] in the divorce action and is now indebted in the amount of \$9,000.” (*Ibid.*)

Relying on this case, Larry argues, “To continue the \$5,500[] support award is, and would be, prejudicial error under the *Webb* court assessment.” Larry misunderstands the holding of the *Webb* case, and misconstrues the record in the case before us. The *Webb* court considered much more than wife’s new salary when terminating support. It considered many factors relating to both parties because several circumstances had changed. Wife went from being unemployed and was responsible for several children to being alone and gainfully employed. The court determined she had saved money, had property, and was self-sufficient without husband’s support payment. Whereas, husband was in debt, newly remarried, and caring for the couple’s minor child. Husband sought modification or termination because he was suffering a financial hardship and wife was not. Their situation is not comparable to Diane and Larry’s financial circumstances. Diane is not self-sufficient without support. Larry is not seeking modification due to a financial hardship. The *Webb* decision does not help Larry but rather supports the conclusion the trial court did not abuse its discretion because it applied all the section 4320 factors before modifying Diane’s support downward from \$9,800 to \$5,500. As stated, the significant change in circumstance resulted in a substantial reduction in support. We find no error.

Fourth, Larry cites to cases holding a spouse who has received a *Gavron*⁵ warning, and has done little to become gainfully employed, can have his or her support terminated for acting in bad faith. Larry asserts this same logic should apply where the supported spouse becomes gainfully employed. He explains, “If reduction or termination is proper where a ‘warned’ spouse did not secure employment . . . it should *surely* be the policy of the law and the proper utilization of appropriate discretion to reduce or terminate when a party who went from \$104,000 in 2004 to zero [for the marriage years and at trial] and then secures a \$90,000 per annum job . . . [.] Diane did what she needed to do per the ‘policy of the law’ to let the parties go their own way with no more entanglements.” Larry concludes the Legislature clearly expressed its intention that supported spouses should be encouraged to be self-sufficient.

This argument completely ignores the fact the Legislature enacted section 4320 to specifically address the appropriate factors to be considered in determining spousal support and also when considering modification or termination. We need not look for hidden policy statements in statutory *Gavron* warnings cases. By weighing the section 4320 factors before modifying support, the court satisfied all legislative goals. And we would have to say the court abused its discretion if it had ignored section 4320 in favor of the bright line rule suggested by Larry.

Fifth, Larry argues Diane’s expense and income declaration showed no arrears and therefore she must have been living within her means with support of \$5,500

⁵ *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705 (*Gavron*). A “*Gavron* warning” is a fair warning to the supported spouse he or she is expected to become self-supporting. The Legislature codified the *Gavron* warning in section 4330, subdivision (b), providing, “When making an order for spousal support, the court may advise the recipient of support that he or she should make reasonable efforts to assist in providing for his or her support needs, taking into account the particular circumstances considered by the court pursuant to [s]ection 4320, unless, in the case of a marriage of long duration as provided for in [s]ection 4336, the court decides this warning is inadvisable.”

and a percentage of commissions.⁶ He recognized Diane's income and expense declaration filed on December 4, 2013, showed a loss of cash and other assets when compared with her July 2013 declaration. Specifically, in the six-month period she used \$7,512 in cash, \$4,225 of her liquid assets, and \$2,929 from other property. Larry argues the lack of credit card debt, obligations, or arrears proved she was self-sufficient. We disagree. All this evidence proves is that \$5,500 support was insufficient and she was depleting her other assets to cover her expenses.

It appears Larry believes the court ignored the above figures, and if it had properly considered this evidence, the court would have realized \$13,000 was more than Diane needed to live each month. He is wrong. The court considered all of Diane's financial assets and means to support herself. At the hearing, the court noted its original support order anticipated Diane would need to use income "from her investments" in addition to Larry's support of \$5,500 *plus a percentage of commissions and bonuses*. It can be reasonably inferred from this statement that the court recognized in both August 2013, and at the modification hearing, that Diane would need to dip into her savings and other assets. Larry points to no evidence in the record that can support his claim the court ignored Diane's access to cash and other investments when determining her need for support. Absent a statement of decision, we cannot say the court's assessment of Diane's needs in light of the various section 4320 factors was an abuse of discretion. As stated, we conclude the court significantly reduced the amount of support.

Sixth, Larry finds it significant that Diane's counsel conceded to a downward modification. We find this fact not relevant because the court went beyond what was conceded. Counsel requested \$4,000 plus 15 percent of commissions and

⁶ We note this argument is factually incorrect because Diane never had the benefit of 31 percent of Larry's commissions and bonuses. By the time of the hearing, Diane had not yet received any portion of his commission or bonus check.

bonuses. This could amount to over \$6,000 per month. The court awarded less, i.e., \$5,500 and eliminated all commissions and bonus payments.

Finally, Larry complains the court failed to ask about Diane's expenses to determine if they were reasonable. We find no error. Larry's motion was based on evidence Diane had a new source of income, not a change in her expenses. He did not argue below that her expenses were unreasonable. He does not suggest on appeal why he believes her expenses were exaggerated or falsified. The court had no sua sponte duty to cross-examine Diane on whether her income and expense declaration was accurate. It was Larry's burden to prove changed circumstances included unwarranted expenses that justified an additional downward modification of support. He failed to do so.

III

The order is affirmed. Diane shall recover her costs on appeal.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.